

FINAL STATEMENT OF REASONS

a) Updates to the Initial Statement of Reasons

Section 45-101(l)(1)

Following the public comment period, the phrase "as defined above" was moved to after "Legal Guardian..." for clarity purposes.

Section 45-101(m)(2)(A)(2)

Following the public hearing, and at its discretion, the California Department of Social Services (CDSS) has amended Section 45-101(m)(2)(A)(2) to add a comma between "payments" and "and" to make a grammatical correction.

Section 45-101(n)(1)

An acronym for "Nonminor Dependent" was corrected and added for clarity purposes.

Specific Purpose:

This section is adopted to include a definition of participation requirement.

Factual Basis:

This section is necessary to clarify that any of the five education and employment conditions, as defined in Welfare and Institutions Code (WIC) section 11403(b), may be referred to as participation requirements. When Extended Foster Care (EFC) was initially implemented, CDSS met with a large workgroup of advocates, former foster youth, and county and state staff. The workgroup and subsequent implementing All County Letters (ACL) commonly referred to any or all of the five education and employment conditions as participation criteria, as a Nonminor Dependent (NMD) must participate in one of the five to continue to be eligible for EFC. Adding this definition will ensure that the counties understand the meaning of participation criteria and that the phrase is used consistently across the state. Section 45-101(r)(1).

Section 45-101(p)(1)

Specific Purpose:

This section is adopted to include a definition of participation requirement.

Factual Basis:

This section is necessary to clarify that any of the five education and employment conditions, as defined in WIC section 11403(b), may be referred to as participation requirements. When EFC was initially implemented, CDSS met with a large workgroup of advocates, former foster youth, and county and state staff. The workgroup and subsequent ACL commonly referred to any or all of the five education and employment conditions as participation criteria, as a Nonminor Dependent (NMD) must participate in one of the five to continue to be eligible for EFC. Adding this definition will ensure that the counties understand the meaning of participation criteria and that the phrase is used consistently across the state.

Section 45-101(r)(1)

Following the public hearing, and at its discretion, CDSS is amending the term "Re-entry into foster care." Specifically, "or" has replaced "and" between "388(e)" and "388." Additionally, the form SOC 163 is added for consistency and incorporated by reference.

This change is necessary for consistency with WIC sections 388(e) and 388.1. California law permits specific populations of nonminors to re-enter foster care. Youth who exited foster care after turning 18 years of age may reenter foster care pursuant to Welfare and Institutions Code Section 388(e). However, some youth who exited foster care prior to turning 18 years of age may reenter foster care after age 18 pursuant to Welfare and Institutions Code Section 388.1. Therefore, a youth may reenter foster care pursuant to either Section 388(e) or 388.1.

Section 45-101(s)(1)

This section is amended to delete the word "approved," as it is inconsistent with statute.

County eligibility workers use CDSS' regulations when determining whether a child or NMD is in a placement that is eligible for foster care funding. Including the definition of a SILP in these regulations will inform and clarify eligible workers for eligibility and ensure consistent funding of the placement.

Section 45-101(t)(3)

Due to legislation that changed the definition of the Transitional Housing Placement - Plus Foster Care (THP-Plus Foster Care) program, this proposed section has been corrected to rename THP-Plus Foster Care as Transitional Housing Placement to avoid contradiction from current legislation.

Section 45-101(t)(4)

Subdivision (f) of WIC section 16501.1 was referenced in the Initial Statement of Reasons. It is being corrected to reference Subdivision (g) for accuracy.

Section 45-101(v)(1)

This section was amended to add the word "Extended" before the words "Foster Care" and add the form SOC 163, which is incorporated by reference.

Section 45-202.521 was renumbered to Section 45-202.522

This section is being renumbered for consistency purposes, as a result of the addition of a new Section 45-202.521.

Sections 45-310.1, .11, and .111

These sections are necessary to clarify the age requirements of the EFC program. 42 USC 675(8)(B) gives states the option to EFC to a youth that has not attained the age of 21. Thus, California added WIC section 11403(a), as added by Section 47 of Assembly Bill (AB) 12 (Chapter 559, Statutes 2010) to be consistent with federal authority. As permitted by The Fostering Connections to Success and Increasing Adoptions Act of 2008 [Public Law (PL) 110-351], California expanded the upper age limit for foster care to 21 through the passage and implementation of AB 12. This section is necessary to ensure that nonminors who meet all other eligibility requirements remain eligible for foster care funding up to age 21.

Section 45-310.12

The phrase Chapter 42-201 has been corrected to reference Section 42-201 for accuracy.

Section 45-310.132

The form "SOC 163" is added for consistency and incorporated by reference.

Section 45-310.16

The reference to Section 45-201.16 has been corrected to reference Section 45-201.15 for accuracy.

Section 45-310.17

Additionally, this section is necessary to comply with Family Code (FC) section 17552, which requires CDSS to promulgate regulations by which the county child welfare department shall determine whether it is in the best interests of an NMD to have the case referred to the local child support agency for child support services. FC section 17552(e) states that an NMD who is over the age of 19 is not a child for the purposes of referral to the local child support agency for collection or enforcement of child support. Therefore, this regulation is necessary to ensure that eligibility workers and social workers only apply the child support requirements in existing regulations if the NMD is under the age of 19.

Sections 45-310.181, .181(a) through (c)

Following the public hearing, and at its discretion, CDSS has amended Section 45-310.181(a) to include examples of types of credentials an NMD might pursue as a form of secondary education. These amendments clarify that a variety of credentials, such as a diploma, a degree, or a certificate, will meet this participation criteria.

These sections are necessary to comply with WIC section 11403(b)(1), which states that a nonminor who is participating in a secondary education program is eligible for EFC benefits. When EFC was initially implemented via ACL, CDSS met with a large workgroup of advocates, former foster youth, and county and state staff to develop appropriate policies. This workgroup developed the categories and criteria for these participation requirements. Accordingly, these sections are added to specify this condition.

Sections 45-310.182, .182(a) through (c)

Following the public hearing, and at its discretion, CDSS has amended Section 45-310.182(b) by striking the phrase "without being enrolled in the institution" and made a change to clarify that courses taken at an institution located *and* licensed or otherwise authorized to operate in another state county towards this participation requirement. These amendments clarify when courses taken at an institution, both in and out of the state of California, will count towards this participation requirement.

Additionally, this section is necessary to clarify for eligibility workers, social workers, NMDs, and other interested stakeholders the conditions under which participation in post-secondary or vocational education meets the education and employment requirements for the continued eligibility of EFC benefits. These regulations are necessary for statewide administration of the EFC program to ensure that youth who are enrolled at least half time in programs described in the regulation are not improperly excluded from EFC. Finally, clarifying that enrollment is deemed continuous during summer or other scheduled breaks during the school program is necessary to ensure that youth who participate in post-secondary or vocational education do not experience a break or disruption in foster care payments during these periods.

Sections 45-310.183, .183(a) and .183(b)

Additionally, this section is necessary to clarify for eligibility workers, social workers, NMDs, and other interested stakeholders the conditions under which employment meets the education and employment requirements for the continued eligibility of EFC benefits. These regulations are necessary for statewide administration of the EFC program to ensure that youth who are employed full or part-time in work activities for at least 80 hours per month are not improperly excluded from EFC.

Sections 45-310.184 and 184(a)

Following the public hearing, and at its discretion, CDSS has amended Sections 45-310.184 and 45-310.184(a) to make a grammatical correction. Specifically, and for clarity, a comma is added between "to" and "employment" in each of these sections.

This section is necessary to clarify for eligibility workers, social workers, NMDs, and other interested stakeholders the conditions under which participation in programs or activities to promote or remove barriers to employment meets the education and employment requirements for the continued eligibility of EFC benefits. These regulations are necessary for statewide administration of the EFC program to ensure that youth who are participating in a program or activity designed to promote, or remove barriers to, employment is not improperly excluded from EFC.

Section 45-310.185(a)(1)

Specific Purpose:

This section clarifies that a nonminor is not required to take remedial measures to treat a medical condition which renders a nonminor incapable of performing any of the other participation criteria in order to remain eligible for EFC funding.

Factual Basis:

When EFC was initially implemented, CDSS met with a large workgroup of advocates, former foster youth, and county and state staff to develop appropriate policies. The workgroup determined that it was necessary to clarify that youth with medical conditions that render them incapable of participating in school, work, or programs or activities to remove barriers to employment should not be forced to engage in measures to treat the medical condition as a condition of continued EFC participation and eligibility. This policy is consistent with the purpose of EFC up to age 21, namely providing a safety net for those youth in foster care at age 18 who continue to need and desire the placement and case planning services. Adding this regulation is necessary to ensure that youth who have a medical condition which renders them incapable of performing any of the other participation criteria are not forced to take remedial measures just for the purpose of remaining eligible for foster care funding.

Section 45-310.185(b)

This section is necessary to clarify for eligibility workers, social workers, NMDs, and other interested stakeholders the conditions under which an NMD continues to be eligible for EFC benefits despite not being able to participate in secondary, in postsecondary, or vocational education, in employment activities for 80 hours per month, or in activities designed to promote, or remove barriers to, employment. These regulations are necessary for statewide administration of the EFC program and clarify that certain types of documentation may be accepted to verify the

disability. These regulations are necessary to ensure that youth who cannot participate in any of those activities are not improperly excluded from EFC.

Sections 45-310.19, .191 through .192

CDSS has amended the language in previous versions as relating to a youth who is incapable of making an informed decision. There was concern that the prior version might have been interpreted to limit the youth who could enter EFC, which was not the intent of the language.

Rather, in order to ensure that the eligibility worker has proper documentation when a youth has been determined incapable of making an informed decision, yet remains in EFC, the regulations have been amended to direct the eligibility worker to maintain such documentation in the file. This will ensure that, for eligibility purposes, the file contains complete information.

WIC section 303(d)(1) states in part, "The nonminor shall enter into a mutual agreement for placement, as described in subdivision (u) of Section 11400, unless the nonminor dependent is incapable of making an informed agreement..." This section of the WIC creates an exception to the general rule that an NMD must sign a mutual agreement. A future regulations package may explain this requirement in further detail, but, for the purpose of foster care eligibility the eligibility worker need only to have documentation that the youth has been determined incapable an informed decision. The exception in Section 303 only applies to the mutual agreement and the SOC 163, the Re-entry Agreement, does not have a similar statutory exemption.

In addition, following the public hearing, and at its discretion, CDSS has removed "wishes to" prior to "remain" for clarity. This amendment clarifies that these provisions will apply to youth who remain in foster care.

Sections 45-310.22, .221. .221(a) and (b)

Following the public hearing, and at its discretion, CDSS has corrected the quote from WIC section 11403(e) that is referenced in the Factual Basis.

In addition, in the Factual Basis, the phrase "Extended Foster Care" is removed from the direct quote for consistency purposes concerning Aid to Families with Dependent Children-Foster Care (AFDC-FC). The quote shall say, "AFDC-FC benefits to NWDs, may be resumed at the request of the nonminor by completing a voluntary re-entry agreement pursuant to subdivision (z) of 11400."

In addition, following the public hearing, and at its discretion, CDSS has amended Section 45-310.221(a) to clarify that date the SOC 163 is signed by the NMD is the relevant date when calculating the beginning date of aid. This clarification ensures that a youth who reenters foster care through the signing of the SOC 163 may begin to receive aid as soon as they sign the form and are placed into an eligible facility. Further, 45-310.221(b) is amended to clarify the eligible placements for

NMDs in foster care. This provision ensures that both county worker and youth understand the types of funded foster care placements.

Sections 45-310.23, .231, .231(a) and (b)

Additional Factual Basis:

These sections are necessary to comply with WIC section 11403(e) which states, "Eligibility for aid under this section shall not terminate until the nonminor dependent attains the age criteria, as set forth in subdivision (a), but aid may be suspended when the nonminor dependent no longer resides in an eligible facility, as described in Section 11402, or is otherwise not eligible for AFDC-FC (Aid to Families with Dependent Children Foster Care) benefits under Section 11401, or terminated at the request of the nonminor, or after a court terminates dependency jurisdiction pursuant to Section 391, delinquency jurisdiction pursuant to Section 607.2, or transition jurisdiction pursuant to Section 452." While WIC 11403(3) is permissive as to whether a suspension should occur, federal requirements are much more stringent as to when payments are allowed. 45 USC 672(b) states,

"Foster care maintenance payments may be made under this part only on behalf of a child described in subsection (a) of this section who is—

(1) in the foster family home of an individual, whether the payments therefor are made to such individual or to a public or private child-placement or child-care agency, or

(2) in a child-care institution, whether the payments therefor are made to such institution or to a public or private child-placement or child-care agency, which payments shall be limited so as to include in such payments only those items which are included in the term "foster care maintenance payments" (as defined in section 675(4) of this title)."

42 USC 672(c) defines foster family home and child care institution. Therefore, Section .231(a) is added to conform with federal requirements.

Additionally, federal Title IV-E policy requires the state to "ensure that a youth receiving a title IV-E foster care maintenance payment under section 475(8)(B) of the Act meets the education and employment criteria or is incapable of meeting any of these criteria due to a medical condition, as elected by the title IV-E agency. Once a title IV-E agency determines that a youth no longer meets the criteria, the agency must discontinue the title IV-E foster care maintenance payment for the youth" (Child Welfare Policy Manual, Section 8.3B question number 8). Additionally, a youth is not eligible for foster care funding if he or she is no longer residing in an eligible facility as defined in MPP sections 45-202.5 and 45-203.4. Therefore, the regulation is necessary to ensure statewide uniformity and to ensure payments are appropriately made.

The Children's Bureau, an office of the Administration of Children and Families within the United States Department of Health and Human Services, regularly

issues Program Instructions (PI's) as well as Policy Guidance in the Child Welfare Policy Manual. These resources, directed to states and grantees, explain procedures and methods for implementing federally-funded programs, add specifics to program regulations or policy guide requirements, and inform states operating federally-funded programs, including the Title IV-E program, on actions they must take. As the single state agency operating the Title IV-E program in California, CDSS must comply with Program Instructions as well as Policy Guidance in the Child Welfare Policy Manual.

Sections 45-310.241(b)

Additionally, Section 45-310.241(b) is necessary to comply with federal law related to the maximum age at which a youth may be eligible for EFC. 42 U.S.C. 675(a)(8)(B)(iii) permits states to extend foster care to a youth "who has not attained 19, 20, or 21 years of age, as the State may elect." California has elected to extend foster care up to age 21. Therefore, in compliance with state and federal law, aid for an NMD must terminate the day before the NMD's 21st birthday.

Section 45-310.231(c)

Additionally, this section is adopted to indicate when EFC payments are suspended. This section is necessary to comply with WIC section 11403(b). Accordingly, participation in one of the five criteria delineated above is required for an EFC payment. If the NMD ceases to participate, his/her eligibility for benefits also ceases. This section is added to specify when a payment should be terminated due to a lack of participation.

Section 45-310.252

Following the public hearing, and at its discretion, CDSS has amended this section to clarify that a late SOC 161 is not grounds to terminate EFC payments and to clarify that reviewing the SOC 161 is a mandatory function for an eligibility worker. The sole grounds for termination or suspension are delineated in Sections 45-310.23 and .24. This amendment is necessary to ensure that NMDs continue to receive funding for placements when administrative or clerical issues have delayed the receipt or review of the SOC 161.

Additionally, the form SOC 161 is added for consistency and incorporated by reference.

Sections 45-310.27 and .271

Following the public hearing, and at its discretion, CDSS has removed these proposed sections as they are unnecessary. This change is nonsubstantive.

Section 45-310.311

The form SOC 163 is added for consistency and incorporated by reference.

Handbook Section 45-310.311

This section was modified quote portions of WIC section 11401.1 rather than paraphrasing the section.

Section 45-310.317

Specific Purpose:

Following the public hearing, CDSS determined that this section is necessary to clarify that a nonminor serving in the reserves of a branch of the military is eligible to continue receiving EFC benefits. Therefore, this section is removed from "Handbook" and is included as regulatory text.

Factual Basis:

This section is necessary to instruct the eligibility worker how to treat cases of NMDs in the military reserves when the NMD is not on active duty. People serving in the military reserves do not live on base or in base housing; they merely report for short times to a military facility. Additionally, an individual in the military reserves may be attending school, working, or otherwise reducing barriers to working. Therefore, the NMD may meet a variety of the participation requirements to remain in EFC and the county child welfare agency or probation department could approve their housing as well as conduct face-to-face monthly social worker visits. This clarification will ensure that eligible youth continue to participate in EFC.

Sections 45-311.11, .111, and .112

Following the public hearing, CDSS notes that this section was inappropriately classified as "Handbook" in the Initial Statement of Reasons. CDSS clarifies that the requirements of 45-311.11, .111, and .112 are regulatory.

Section 45-311.31

Following the public hearing, and at its discretion, CDSS has amended Section 45-311.31 by adding "to" between "or" and "any." This amendment clarifies that federal financial participation may be available in payments made to the NMD or to any of the listed payees, as described in the regulation.

Section 45-312.31

Following the public hearing, and at its discretion, CDSS has amended Section 45-312.31 by adding "to" between "or" and "any." This amendment clarifies that funding may be available in payments made to the NMD or to any of the listed payees, as described in the regulation.

Handbook Section 45-312.41(a)

Following the public hearing, and at its discretion, CDSS has removed this Handbook Section.

Sections 45-312.52, .521, .521(a) and (b), .521(b)(1) through (3), .522, .522(a), and .523

Following the public hearing, CDSS is making a change to this section for clarity purposes.

Language was inadvertently left out of Section 45-312.523 which clarifies how the nonminor can become his or her own payee. This section was modified to add that language. This modification is necessary to ensure that counties, nonminors, and guardians understand when a young person can be their own payee and that the same standards are applied on a statewide basis.

The FC 2 is a form defined in 45-102(f)(1) and is used to collect information necessary to determine foster care eligibility at the time of application and redetermination.

The form SOC 155B is added for consistency and incorporated by reference.

Section 45-312.531(b)

Following the public hearing, it was noted that although this section of regulations was initially included in the regulations package, it was deleted prior to going to public hearing and is not needed.

~~Section 45-312.531(c)~~ Section 45-312.531(b)

Following the public hearing, it was noted that the Specific Purpose and Factual Basis section were improperly referenced to Section 45-312.531(c). The specific purpose and factual basis in this section supports Section 45-312.531(b). Additionally, and for clarity, CDSS has further amended Section 45-312.531(c) by inserting "Mutual Agreement for" between "Sign a" and "EFC." The insertion of this phrase is necessary to clarify one type of agreement that identifies the authority for placement in order to receive foster care funding.

The form SOC 162 is added for consistency and incorporated by reference.

~~Section 45-312.531(d) and (d)(1)~~ Section 45-312.531(c) and (c)(1)

Following the public hearing, it was noted that the Specific Purpose and Factual Basis sections were improperly referenced to Section 45-312.531(d) and (d)(1). The specific purpose and factual basis in this section supports Sections 45-312.531(c) and (c)(1).

Section 45-312.531(e) Section 45-312.531(d)

Following the public hearing, it was determined that the Specific Purpose and Factual Basis for Section 45-312.531(d) was mistakenly improperly referenced to Section 45-312.531(e) and was confused with the Specific Purpose and Factual Basis for Section 45-312.532 in the Initial Statement of Reasons. Therefore, CDSS provides the following statements of Specific Purpose and Factual Basis for Section 45-312.531(d):

Specific Purpose:

This section is adopted to clarify that, in order to be eligible for extended nonrelated legal guardianship benefits, a nonminor whose legal guardianship was established by the juvenile court must meet one of the participation requirements of Section 45-310.18.

Factual Basis:

This section is necessary to comply with WIC section 11405(e)(1), which requires the nonminor to meet the "conditions of eligibility, as described in paragraphs (1) to (5), inclusive, of subdivision (b) of Section 11403." Therefore, to continue to receive extended nonrelated legal guardianship benefits, the youth must participate in secondary education, postsecondary or vocational education, employment, a program or activity designed to promote or remove barriers to employment or be unable to participate in any of these activities. County eligibility workers use CDSS' regulations when determining whether the child or NMD is in a placement that is eligible for foster care funding. These sections will inform eligibility workers and ensure consistent funding in the AFDC-FC program.

Section 45-312.532

Following the public hearing, it was determined that the Specific Purpose and Factual Basis for Section 45-312.532 was mistakenly associated with Section 45-312.531(e) in the Initial Statement of Reasons. Therefore, CDSS provides the following statements of Specific purpose and Factual basis for Section 45-312.532:

Specific Purpose:

This section is adopted to clarify that the legal guardian will continue to receive the nonminors' EFC payment unless the nonminor can satisfy the conditions of Section 45-301.214.

Factual Basis:

This section is necessary to comply with WIC section 11405(e), which requires the guardian to maintain responsibility for support of the nonminor to continue eligibility. Thus, the guardian will continue to receive the EFC payment on behalf of the nonminor. However, if the nonminor can satisfy the requirements of Section 45-301.214, he/she can become his own payee as he/she could prior to reaching age 18. County eligibility workers use CDSS' regulations when determining whether the child or NMD is in a placement that is eligible for foster care funding. These sections will inform eligibility workers and ensure consistent funding in the AFDC-FC program.

Sections 45-312.54, .541, and .542

Following the public hearing, it was determined that Sections 45-312.54, .541, and .542 were mistakenly omitted from the Initial Statement of Reasons. Therefore, CDSS provides the following statements of Specific Purpose and Factual Basis for these sections:

Specific Purpose:

These sections are adopted to clarify the conditions under which certain youth who formerly received federally funded benefits under the Kinship Guardianship Assistance Program (Kin-GAP) may receive benefits through AFDC-FC.

Factual Basis:

This section is necessary to comply with WIC section 11405(e)(2), which permits a nonminor who attained 18 years of age while in receipt of federally funded Kin-GAP to receive AFDC-FC benefits up to age 21 when specific conditions apply. Consistent with the statute, the regulation requires the relationship between the nonminor and the Kin-GAP guardian to be one not created through blood, adoption, or affinity within the fifth degree of kinship, the nonminor must have been under 16 years of age at the time the Kin-GAP negotiated agreement payments commenced, the nonminor can no longer be eligible for benefits under the Kin-GAP program, and the nonminor must meet the same participation requirements, as described in WIC section 11403 and Section 45-310.18, just like all youth who receive an EFC benefit. Additionally, as required by statute, the guardian must continue to be responsible for the support of the nonminor.

These regulations are necessary for the consistent statewide application of these eligibility requirements. County eligibility workers use CDSS' regulations when determining whether the child or NMD is in a placement that is eligible for foster care funding. They may not turn to the statute to examine eligibility conditions, making the regulations often the primary resource for eligibility information. These sections will inform eligibility workers and ensure consistent funding in the AFDC-FC program.

b) Forms Incorporated by Reference

1. SOC 155B (3/00), Mutual Agreement For 18 Year Olds
2. SOC 161 (9/11), Six-Month Certification Of Extended Foster Care Participation
3. SOC 162 (7/18), Mutual Agreement for Extended Foster Care
4. SOC 163 (7/18), Voluntary Re-Entry Agreement For Extended Foster Care

It would be cumbersome, unduly expensive, and otherwise impractical to publish these forms in the CCR. The forms were omitted during the 45-Day Public Comment Period; therefore, they are available to the public for review during the 15-Day Renotice Period.

SOC 155B (3/00), Mutual Agreement For 18 Year Olds is adopted and incorporated by reference. The purpose of this form is to document the mutual agreement between the placing agency and a youth whose nonrelated legal guardianship was created by the probate court. For the youth to continue receive AFDC-FC benefits after age 18, and up to age 19, while the youth is completing his or her education. The form details the expectations of both the youth and the agency and is necessary to implement W&I Code section 11405. Moreover, this form is necessary for consistency and uniformity in the statewide administration of the EFC program.

The SOC 161 (9/11), Six-Month Certification Of Extended Foster Care Participation is adopted and incorporated by reference. The purpose of this form is to provide a uniform way for the social worker or probation officer to certify a nonminor's participation in extended foster care activities. The form is transmitted it to the eligibility worker, who ensures that the youth continues to receive proper benefits based, in part, on the certification. This form is necessary to ensure that eligible youth continue to receive extended foster care funding and so that proper documentation of eligibility is maintained in the child welfare care. Moreover, this form is necessary for consistency and uniformity in the statewide administration of the EFC program.

The SOC 162 (7/18), Mutual Agreement for Extended Foster Care is adopted and incorporated by reference. The purpose of this form is to formalize a youth's agreement to remain in foster care under the supervision of the child welfare or probation department, after the age of 18 and up to age 21. This form documents the responsibilities and expectations of both the youth and the agency, ensuring that youth will remain eligible for extended foster care. This form is necessary to ensure that there is documentation for the legal authority for placement and care, as required by WIC section 11403(b). Moreover, this form is necessary for consistency and uniformity in the statewide administration of the EFC program.

The SOC 163 (7/18), Voluntary Re-Entry Agreement For Extended Foster Care is adopted and incorporated by reference. The purpose of this form is to document

the agreement between the placing agency and a youth who intends to reenter foster care after the age of 18 and up to age 21. This form documents the responsibilities and expectations of both the youth and the agency, ensuring that youth will remain eligible for extended foster care benefits. This form is necessary to ensure that there is documentation for the legal authority for placement and care, as required by WIC section 11403(b). Moreover, this form is necessary for consistency and uniformity in the statewide administration of the EFC program.

b) Local Mandate Statement

These regulations do impose a mandate upon local agencies, but not on school districts. There are no "state-mandated local costs" in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code (GC) because any costs associated with the implementation of these regulations are costs mandated by the federal government within the meaning of Section 17513 of the GC.

c) Statement of Alternatives Considered

CDSS determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

d) Statement of Significant Adverse Economic Impact On Business

CDSS determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made based on the proposed regulations only involve local government.

e) Testimony and Response

These regulations were considered as Item #1 at the public hearing held on July 2, 2018, in Sacramento, California. No oral testimony was received during the public hearing but written was received from the following during the 45-day comment period (May 18, 2018 to 5:00 p.m. July 2, 2018).

Comments from the Alliance for Children's Rights and Bay Area Legal Aid

1. Section 45-310.231(c)

Comment:

"We recommend deleting 45-310.231(c), which states that extended foster care benefits may be suspended when a nonminor dependent "no longer meets any participation criteria." As written, the regulation allows a nonminor dependent's benefits to be suspended based on a unilateral decision by the youth's social worker or probation officer that the nonminor dependent does not meet a participation criterion. However, the Department of Social Services has made clear that the determination that a nonminor dependent no longer meets participation criteria must be made by the juvenile court. All County Letter 11-69 states, in relevant part:

'It is the responsibility of the case manager to engage the NMDs and assist them in maintaining eligibility. If efforts to resolve the eligibility issue by working with the NMD are unsuccessful, and the NMD remains unwilling to reside in an approved placement and either comply with the existing case plan, or modify the case plan to reflect new circumstances and goals, then the case manager shall request the court to set a W&IC 391 court hearing to begin the process to terminate court jurisdiction.'

ACL 11-69 (emphasis added).

Accordingly, once a nonminor dependent is purportedly noncompliant with the participation criteria, the social worker or probation officer is required to request a court hearing to determine whether jurisdiction must be terminated. If the court finds that the nonminor dependent is noncompliant, it will terminate court jurisdiction and the nonminor dependent will no longer be eligible for benefits. However, absent that judicial finding, the county cannot suspend benefits to an otherwise eligible nonminor dependent residing in an approved placement solely because the county alleges that the nonminor dependent no longer meets participation criteria. Nonparticipation is a basis for termination, but not suspension."

Response:

CDSS appreciates these comments but is not amending the regulation at this time. Although ACL 11-69 did require a judicial determination to discontinue EFC payments due to lack of participation, the statute, WIC section 11403(e), has subsequently been amended to clarify the conditions under which payment may be suspended by the agency. Therefore, the judicial step to terminate payment is no longer required and the statutory change permits the suspension of benefits under the circumstances that we've identified; requiring payment to be suspended is appropriate and reduces the risk of overpayments or disallowances.

2. Sections 45-310.23 and 45-310.24

Comment:

"We recommend adding references to the Manual of Policies and Procedures regulations on State Hearing in Sections 45-310.23 and 45-310.24. Chapter 22-000 of the Manual of Policies and Procedures sets forth the due process requirements counties must adhere to when benefits are changed, including when benefits are suspended or terminated. Although these requirements apply to AFDC-FC beneficiaries, including nonminor dependents, in our experience, it is rare that nonminor dependents receive notices of action when their extended foster care benefits are suspended or terminated. As a result, these youths do not know the basis for the county's decision and have no opportunity to appeal. We recommend explicitly stating in Sections 45-310.23 and 45-310.24 that nonminor dependents are entitled to adequate notice and the opportunity to request a state hearing under Chapter 22-000."

Response:

CDSS appreciates this comment but is not amending the regulation at this time. All benefit programs are subject to the regulations at Chapter 22-000, including EFC. However, CDSS has been in contact with the commenter to ascertain which counties have not been following the 22 regulations and have been in contact with that county providing training and technical assistance to ensure they know the requirements and are following them.

Comments from Children's Advocacy Institute (CAI)

1. Section 45-101(t)(3)

Comment:

"First, proposed regulatory section 45-101(t)(3) defines Transitional Housing Placement-Plus Foster Care as a placement that offers 'supervised housing opportunities' and supportive services to eligible nonminor dependents. It would be helpful to have a definition for the term 'supervised housing opportunities.' This would help to differentiate 'supervised housing opportunities' from an "independent supervised setting" (a term used in existing regulatory language)—if in fact there is any difference."

Response:

CDSS appreciates this comment but is not amending the regulation at this time. Regulations will subsequently be developed related to the THPP-Plus Foster Care placements and this comment will be addressed in those regulations.

2. Section 45-310.231

Comment:

"Second, proposed regulatory section 45-310.231 articulates the instances in which extended foster care benefits 'shall' be suspended (emphasis added). The proposed regulation is intended to comply with WIC section 11403(e), which states 'Eligibility for aid under this section shall not terminate until the nonminor dependent attains the age criteria, as set forth in subdivision (a), but aid may be suspended when the nonminor dependent no longer resides in an eligible facility, as described in Section 11402, or is otherwise not eligible for AFDC-FC benefits under Section 11401...' (emphasis added). By using the word 'shall,' the proposed regulatory language removes the discretion contained within the statute it is supposed to be implementing. We would suggest the discretion expressly contained in the statute be reflected in the regulation."

Response:

CDSS appreciates these comments but is not amending the regulation at this time. Although ACL 11-69 did require a judicial determination to discontinue EFC payments due to lack of participation, the statute, WIC section 11403(e), has subsequently been amended and this step is no longer required. Additionally, federal Title IV-E policy requires the state to "ensure that a youth receiving a title IV-E foster care maintenance payment under section 475(8)(B) of the Act meets the education and employment criteria or is incapable of meeting any of these criteria due to a medical condition, as elected by the title IV-E agency. Once a title IV-E agency determines that a youth no longer meets the criteria, the agency must discontinue the title IV-E foster care maintenance payment for the youth" (Child Welfare Policy Manual, Section 8.3B question number 8). Additionally, a youth is not eligible for foster care funding if he or she is no longer residing in an eligible facility as defined in MPP sections 45-202.5 and 45-203.4. Therefore, the regulation is necessary to ensure statewide uniformity and to ensure payments are appropriately made.

3. Section 45-312.523

Comment:

"Finally, proposed regulatory provision 45-312.523 appears to be incomplete. The regulation reads 'The NRLG will receive the nonminor's EFC payment unless the nonminor payee.' We think some wording may have been inadvertently left out of this provision."

Response:

CDSS appreciates this comment and agrees that regulation language is missing related to how the nonminor would receive his/her own payment.

The regulation is amended to read:

.523 The NRLG will receive the nonminor's EFC payment unless the nonminor payee can satisfy the conditions in section 45-301.214 and be his or her own payee.

f) 15-Day Renotice Statement

Pursuant to GC section 11347.1, a 15-day renotice and a modified regulations text were made available to the public following the public hearing during the periods of September 20, 2018 to October 8, 2018, and April 2, 2019 to April 17, 2019. No testimony was received as a result of these 15-day renotice periods.